

Pub. L. 105-34, §1144(b), redesignated subsec. (b) as (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 409(d) of Pub. L. 109-135, set out as a note under section 961 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1144(d)(1), Aug. 5, 1997, 111 Stat. 985, provided that: "The amendments made by this section [amending this section] shall apply to transfers made after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE

Section applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 367 of this title.

ELECTION OF RETROACTIVE EFFECT

Pub. L. 105-34, title XI, §1144(d)(2), Aug. 5, 1997, 111 Stat. 985, provided that: "Section 1494(c) of the Internal Revenue Code of 1986 shall not apply to any transfer after August 20, 1996, if all applicable reporting requirements under section 6038B of such Code (as amended by this section) are satisfied. The Secretary of the Treasury or his delegate may prescribe simplified reporting requirements under the preceding sentence."

§ 6038C. Information with respect to foreign corporations engaged in U.S. business

(a) Requirement

If a foreign corporation (hereinafter in this section referred to as the "reporting corporation") is engaged in a trade or business within the United States at any time during a taxable year—

(1) such corporation shall furnish (at such time and in such manner as the Secretary shall by regulations prescribe) the information described in subsection (b), and

(2) such corporation shall maintain (at the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the liability of such corporation for tax under this title as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records).

(b) Required information

For purposes of subsection (a), the information described in this subsection is—

(1) the information described in section 6038A(b), and

(2) such other information as the Secretary may prescribe by regulations relating to any item not directly connected with a transaction for which information is required under paragraph (1).

(c) Penalty for failure to furnish information or maintain records

The provisions of subsection (d) of section 6038A shall apply to—

(1) any failure to furnish (within the time prescribed by regulations) any information described in subsection (b), and

(2) any failure to maintain (or cause another to maintain) records as required by subsection (a),

in the same manner as if such failure were a failure to comply with the provisions of section 6038A.

(d) Enforcement of requests for certain records

(1) Agreement to treat corporation as agent

The rules of paragraph (3) shall apply to any transaction between the reporting corporation and any related party who is a foreign person unless such related party agrees (in such manner and at such time as the Secretary shall prescribe) to authorize the reporting corporation to act as such related party's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to any such transaction or with respect to any summons by the Secretary for such records or testimony. The appearance of persons or production of records by reason of the reporting corporation being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of any transaction between the reporting corporation and such related party.

(2) Rules where information not furnished

If—

(A) for purposes of determining the amount of the reporting corporation's liability for tax under this title, the Secretary issues a summons to such corporation to produce (either directly or as an agent for a related party who is a foreign person) any records or testimony,

(B) such summons is not quashed in a proceeding begun under paragraph (4) of section 6038A(e) (as made applicable by paragraph (4) of this subsection) and is not determined to be invalid in a proceeding begun under section 7604(b) to enforce such summons, and

(C) the reporting corporation does not substantially comply in a timely manner with such summons and the Secretary has sent by certified or registered mail a notice to such reporting corporation that such reporting corporation has not so substantially complied,

the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which such summons relates (whether or not the Secretary begins a proceeding to enforce such summons). If the reporting corporation fails to maintain (or cause another to maintain) records as required by subsection (a), and by reason of that failure, the summons is quashed in a proceeding described in subparagraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which the records relate.

(3) Applicable rules

If the rules of this paragraph apply to any transaction or item, the treatment of such transaction (or the amount and treatment of any such item) shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

(4) Judicial proceedings

The provisions of section 6038A(e)(4) shall apply with respect to any summons referred to in paragraph (2)(A); except that subparagraph (D) of such section shall be applied by substituting "transaction or item" for "transaction".

(e) Definitions

For purposes of this section, the terms "related party", "foreign person", and "records" have the respective meanings given to such terms by section 6038A(c).

(Added Pub. L. 101-508, title XI, § 11315(a), Nov. 5, 1990, 104 Stat. 1388-456.)

EFFECTIVE DATE

Section applicable to (1) any requirement to furnish information under this section if the time for furnishing such information is after Nov. 5, 1990, (2) any requirement under subsec. (a) of this section to maintain records which were in existence on or after Mar. 20, 1990, (3) any requirement to authorize a corporation to act as a limited agent under subsec. (d)(1) of this section if the time for authorizing such action is after Nov. 5, 1990, and (4) any summons issued after Nov. 5, 1990, without regard to when the taxable year (to which the information, records, authorization, or summons relates) began, see section 11315(c) of Pub. L. 101-508, set out as an Effective Date of 1990 Amendment note under section 6038A of this title.

§ 6038D. Information with respect to foreign financial assets**(a) In general**

Any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall attach to such person's return of tax imposed by subtitle A for such taxable year the information described in subsection (c) with respect to each such asset if the aggregate value of all such assets exceeds \$50,000 (or such higher dollar amount as the Secretary may prescribe).

(b) Specified foreign financial assets

For purposes of this section, the term "specified foreign financial asset" means—

(1) any financial account (as defined in section 1471(d)(2)) maintained by a foreign financial institution (as defined in section 1471(d)(4)), and

(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section 1471(d)(5))—

(A) any stock or security issued by a person other than a United States person,

(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

(C) any interest in a foreign entity (as defined in section 1473).

(c) Required information

The information described in this subsection with respect to any asset is:

(1) In the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account.

(2) In the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part.

(3) In the case of any other instrument, contract, or interest—

(A) such information as is necessary to identify such instrument, contract, or interest, and

(B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest.

(4) The maximum value of the asset during the taxable year.

(d) Penalty for failure to disclose**(1) In general**

If any individual fails to furnish the information described in subsection (c) with respect to any taxable year at the time and in the manner described in subsection (a), such person shall pay a penalty of \$10,000.

(2) Increase in penalty where failure continues after notification

If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual shall pay a penalty (in addition to the penalties under paragraph (1)) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The penalty imposed under this paragraph with respect to any failure shall not exceed \$50,000.

(e) Presumption that value of specified foreign financial assets exceeds dollar threshold

If—

(1) the Secretary determines that an individual has an interest in one or more specified foreign financial assets, and

(2) such individual does not provide sufficient information to demonstrate the aggregate value of such assets,

then the aggregate value of such assets shall be treated as being in excess of \$50,000 (or such higher dollar amount as the Secretary prescribes for purposes of subsection (a)) for purposes of assessing the penalties imposed under this section.

(f) Application to certain entities

To the extent provided by the Secretary in regulations or other guidance, the provisions of this section shall apply to any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

(g) Reasonable cause exception

No penalty shall be imposed by this section on any failure which is shown to be due to reason-